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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT G. ARSENAULT, TAM T. LEMINH,  
CRAIG A. FINSETH, JEFFREY A. BROWN, and PHILIP E. HSIAO

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Appeal 2009-000653  
Application 09/534,708  
Technology Center 2400

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Decided: October 27, 2009

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Before ROBERT E. NAPPI, KARL D. EASTHOM,  
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 28-30 and 32-47. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## INVENTION

Appellants' claimed invention is directed to content used in creating an electronic program guide and/or channels for a television reception system delivered to a local receiving device, such as a direct to home satellite receiver, as individual digital objects (Abstract). Rules (i.e., conditional expressions) may be embedded in the digital objects to allow different actions in different situations (Abstract). These rules can be used to determine whether an object should be stored, which objects should be included in an electronic program guide, and/or what content should be used to create a particular channel (Abstract).

Claim 28, reproduced below, is representative of the subject matter on appeal:

28. A method of broadcasting television content and program guide data, the television content divided into a plurality of television channels, each television channel constructed from at least one content component, the program guide data including multiple channel objects, each channel object associated with one of the television channels, each channel object including at least one channel definition that identifies the channel content components including a video component or an audio component needed to construct the television channel associated with that channel object for display, wherein the method comprising:

providing the television content and the program guide data;  
adding conditional logic to channel objects that include more than one channel definition, the conditional logic including one or more rules that must be evaluated by a receiver to identify a first channel definition or a second channel definition based on receiver characteristics data representing a characteristic of the receiver, the first channel definition being associated with a first video component or a first audio component, and the second channel definition being associated with a second video component or a second audio component;  
combining the television content and the program guide data into an output stream; and  
broadcasting the output stream to a plurality of receivers.

#### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Beyers	US 5,381,477	Jan. 10, 1995
Gordon	US 2001/0056577A1	Dec. 27, 2001 (Apr. 15, 1999)

The following rejections are before us for review:

The Examiner rejected claims 28-30 and 32-47 under 35 U.S.C.

§ 103(a) as being unpatentable over Gordon in view of Beyers.

Appellants argue claims 28-30, 32-35, and 38-47 as a group with claim 28 as representative (App. Br. 13-17). Accordingly, claims 28-30, 32-35, and 38-47 stand or fall with claim 28.<sup>1</sup> See 37 C.F.R. § 41.37(c)(1)(vii) (2004).

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<sup>1</sup> Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed waived. See 37 C.F.R. § 41.37(c)(1)(vii) (2004).

## OBVIOUSNESS

### ISSUE

Appellants argue that there is no indication in Beyers that conditional logic is evaluated “by a receiver” based on receiver characteristics data representing a characteristic of the receiver nor does the Examiner provide any justification for such an assertion (App. Br. 14) (emphasis in original).

Appellants further argue that varying the length and arrangement of message data to be compatible with a subscriber terminal is not the same as and does not suggest conditional logic that is evaluated by a receiver (App. Br. 15). Appellants assert that because message data is arranged to be compatible with an addressed subscriber terminal as sent, no evaluation of conditional logic is needed to display the message (App. Br. 15).

Appellants argue that a command or an instruction is not inherently conditional logic (App. Br. 15). Rather, the use of phrase “command or instruction” by Beyers implies a singular command or singular instruction (App. Br. 15).

Appellants conclude that Beyers does not describe or suggest conditional logic evaluated by a receiver based on receiver characteristics data representing a characteristic of the receiver (App. Br. 15-16).

The Examiner responds that Beyers’s column 9, lines 9-37, teaches that the transaction code carries the commands or instructions (i.e., one or more rules) to be evaluated by the addressed terminal (Ans. 12). The Examiner further finds Beyers teaches that message data for display on an addressable subscriber terminal may be transmitted using transactions such as Transaction Type A (Ans. 12). The

Examiner also finds that depending on the length of the messages, “the characteristics of the subscriber terminals” and the scramblers and other factors, the particular length and arrangement of message data within these transactions may be varied to suit the particular configuration (Ans. 11-12) (emphasis in original).

Appellants further argue based on the Examiner’s response that Beyers does not teach that the transaction code includes any test rules for evaluating whether the address matches a subscriber terminal, and that such instructions for such matching may be pre-stored at a subscriber terminal (Reply Br. 6).

Thus, the pivotal issue is whether Appellants have shown that the Examiner erred in finding that Beyers teaches the limitation of: “adding conditional logic to channel objects that include more than one channel definition, the conditional logic including one or more rules that must be evaluated by a receiver to identify a first channel definition or a second channel definition based on receiver characteristics data representing a characteristic of the receiver” as recited in representative claim 28.

#### FINDINGS OF FACT

The following findings of fact (FF) supported by a preponderance of the evidence:

1. Appellants’ Abstract defines the digital object as “[c]ontent used in creating an electronic program guide and/or channels for a television reception system” (Abstract).
2. Appellants’ Abstract also states: “[r]ules (i.e., conditional expressions) may

be embedded in the digital objects to allow different actions in different situations” (Abstract).

3. Beyers teaches in Figure 4(A) a plurality of transaction types, which may be identified as transaction types A-E having different lengths and including message data as well as transaction code or operand (col. 9, ll. 9-29).
4. Beyers also teaches that the transaction code or operand provides signals commands or instructions for execution by the addressed subscriber terminal(s) (col. 9, ll. 30-32).
5. Beyers cites an example wherein the data comprise a list of scrambled channels and the operand or transaction code signal the storage of a new list of scrambled channels in terminal memory (col. 9, ll. 34-37).
6. Beyers also cites another example of Transaction Type D which signals the storage of a channel program guide for display (col. 10, ll. 8-10).
7. Beyers also teaches that longer transactions may involve longer streams of data such as channel tuning data (col. 10, ll. 3-4).
8. Beyers teaches that message data are sent to the particular subscribers based in part on “*the characteristics of the subscriber terminals*” (col. 9, ll. 23-29) (emphasis in original).
9. Beyers further teaches that each terminal *recognizes* the group number and then accepts the message as a message intended for it (col. 3, ll. 16-21).

## PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellant to overcome the prima facie case with argument and/or evidence. *Id.*

The scope of the claims in patent applications are not determined solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

## ANALYSIS

### *Regarding the rejection of claims 28-30, 32-35, and 38-47*

At the outset, we note that we agree with the Examiner's findings of fact and line of reasoning and we adopt them as our own. We add the following primarily for emphasis.

Appellants' Abstract defines the digital object as "[c]ontent used in creating an electronic program guide and/or channels for a television reception system" (FF 1). Appellants' Abstract also states: "[r]ules (i.e., conditional expressions) may be embedded in the digital objects to allow different actions in different situations" (FF 2).

Beyers teaches in Figure 4(A) a plurality of transaction types, which may be identified as transaction types A-E having different lengths and including message

data as well as transaction code or operand (FF 3). Beyers also teaches that the transaction code or operand provides signals commands or instructions for execution by the addressed subscriber terminal(s) (FF 4). Beyers cites an example wherein the data comprise a list of scrambled channels and the operand or transaction code signal the storage of a new list of scrambled channels in terminal memory (FF 5). Beyers also cites another example of Transaction Type D which signals the storage of a channel program guide for display (FF 6). Beyers also teaches that longer transactions may involve longer streams of data such as channel tuning data (FF 7).

Thus, Beyers clearly teaches digital objects (i.e., different transaction Types A-E) which include content used in creating an electronic program guide and/or channels (i.e., list of scrambled channels or channel program guide) for addressed television reception systems and rules (i.e., storing the list of scrambled channels or storing the channel program guide for display). Accordingly, Beyers teaches that the reception unit executes particular functions depending on the specific rules embedded in each Transaction Type. It follows that Beyers teaches that depending on the rule (i.e., conditional expressions) there would be different actions in different situations similar to Appellants' own definition of rules and digital objects. Thus, the Examiner appropriately gave the claims their broadest reasonable construction in light of the specification (i.e., Abstract definitions) as it would be interpreted by one of ordinary skill in the art. *See Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364.

For the reasons articulated *supra*, we do not agree with Appellants that a command or an instruction is not inherently conditional logic and that the use of

the phrase “command or instruction” by Beyers implies a singular command or singular instruction (App. Br. 15).

We also do not agree with Appellants’ conclusion that Beyers does not describe or suggest conditional logic evaluated by a receiver based on receiver characteristics data representing a characteristic of the receiver (App. Br. 15-16).

The Examiner finds, and we agree, that message data are sent to the particular subscribers based in part on “the characteristics of the subscriber terminals” (Ans. 11-12) (FF 8) (emphasis in original). Beyers further teaches that each terminal *recognizes* the group number and then accepts the message as a message intended for it (FF 9). Accordingly, Beyers teaches that but for addressing the message data according to characteristics of the subscriber terminals and recognition of the group number by the terminal the message data would not be accepted by the terminal.

We are also not persuaded by Appellants’ argument that Beyers does not teach that the transaction code includes any test rules for evaluating whether the address matches a subscriber terminal, and that such instructions for such matching may be pre-stored at a subscriber terminal (Reply Br. 6). Appellants’ statement merely concludes that instructions for matching the address are pre-stored without citing any evidence. We consider such a conclusory assertion without supporting evidence particularly pointing out errors in the Examiner’s reasoning to fall short of persuasively rebutting the Examiner’s prima facie case of obviousness. *See Oetiker*, 977 F.2d at 1445.

For the foregoing reasons, we sustain the Examiner’s rejection of claim 28, and claims 29-30, 32-35, and 38-47 which fall with claim 28.

*Regarding the rejection of claims 36 and 37*

We note that although Appellants nominally argue claims 36 and 37 separately (App. Br. 17-19), Appellants essentially reiterate the claim limitations and do not provide any substantive analysis or explanation as to how or why these limitations are not obvious over Gordon in view of Beyers. Simply pointing out what a claim requires with no attempt to point out how or why the claims patentably distinguish over the prior art does not amount to a separate argument for patentability. 37 C.F.R. § 41.37(c)(1)(vii) (2004). *See also In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

Accordingly, for the same reasons as articulated *supra* with respect to claim 28, we sustain the Examiner's rejection of claims 36 and 37.

CONCLUSION

Under 35 U.S.C. § 103, Appellants have not shown that the Examiner erred in finding that Beyers teaches the limitation of: "adding conditional logic to channel objects that include more than one channel definition, the conditional logic including one or more rules that must be evaluated by a receiver to identify a first channel definition or a second channel definition based on receiver characteristics data representing a characteristic of the receiver."

ORDER

The decision of the Examiner to reject claims 28-30 and 32-47 is affirmed.

Appeal 2009-000653  
Application 09/534,708

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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